T.L.W. asks the Utah Labor Commission to review Administrative Law Judge Lima's denial of Ms. W.'s claim for benefits under the Utah Workers' Compensation Act ("the Act"; Title 34A, Chapter 2, Utah Code Annotated).

The Labor Commission exercises jurisdiction over this motion for review pursuant to Utah Code Ann. §63-46b-12 and Utah Code Ann. §34A-2-801(3).

BACKGROUND AND ISSUE PRESENTED

Ms. W. claims workers' compensation benefits for a low-back injury allegedly sustained while working at Home Depot on May 13 and November 9, 2003. Ms. W. filed her first application with the Commission on December 13, 2004. She filed an amended application on February 17, 2005. Judge Lima held an evidentiary hearing on September 13, 2005, and then denied Ms. W.'s claim on December 30, 2005, on the grounds the claim failed to satisfy the more stringent prong of the *Allen*[1] test for legal causation.

In requesting Commission review of Judge Lima's decision, Ms. W. argues that the more stringent *Allen* test for legal causation does not apply to her claim. Alternatively, Ms. W. argues that, even if the more stringent test does apply, the circumstances of her work at Home Depot satisfy that test.

FINDINGS OF FACT

The Commission adopts Judge Lima's findings of fact. As relevant to the issues raised by Ms. W.'s motion for review, the facts can be summarized as follows.

Ms. W. has had numerous chronic problems with her low back since 1989. The Commission accepts the opinions of Dr. Goldstein and Dr. Moress that these preexisting conditions were aggravated by two incidents at Home Depot.

On May 13, 2004, while working at Home Depot, Ms. W. lifted five or six boxes weighing 13 pounds and two boxes weighing 25 pounds each. These boxes were lifted one at a time and carried approximately 10 feet. Ms. W. felt no discomfort as she moved the lighter boxes, but experienced back pain as she worked with the heavier boxes.

On November 9, 2004, again while working at Home Depot, Ms. W. crouched down to cut a carpet runner. When she tried to stand up, she fell into a display, hitting her back and left hip on the display and her left shoulder on the cement floor.

DISCUSSION AND CONCLUSION OF LAW

1 See *Allen v. Industrial Commission,* 729 P.2d 15, (Utah 1986).

Applicability of the more stringent *Allen* test for legal causation. In *Allen v. Industrial Commission*, 729 P.2d at 26, the Utah Supreme Court held that an injured worker must establish that his or her work is both the "legal cause" and the "medical cause" of the injuries for which workers' compensation benefits are sought. In *Price River Coal Co. v. Industrial Commission*, 731 P.2d 1079, 1082 (Utah 1986), the Utah Supreme Court described the test for legal causation as follows:

> Under Allen, a usual or ordinary exertion, so long as it is an activity connected with the employee's duties, will suffice to show legal cause. However, if the claimant suffers from a pre-existing condition, then he or she must show that the employment activity involved some unusual or extraordinary exertion over and above the "usual wear and tear and exertions of nonemployment life." . . . . (Citations omitted.)

However, not every pre-existing condition will trigger application of the more stringent test for legal causation. As the Utah Court of Appeals stated in *Nyrehn v. Industrial Commission*, 800 P. 2d 300, 334 (Utah App. 1990):

> [The Commission] may not simply presume that the finding of a preexisting condition warrants application of the Allen test. An employer must prove medically that the claimant 'suffers from a preexisting condition which **contributes** to the injury**.'** (Citations omitted; emphasis added.)[2]

The preponderance of evidence regarding Ms. W.'S claim establishes the existence of preexisting back problems that contributed to the injury for which she now seeks workers' compensation benefits. As previously noted, both Dr. Goldstein and Dr. Moress are of the opinion that Ms. W. suffered from conditions that already existed at the time of the incidents at Home Depot, and were merely aggravated by those events. Therefore, before Ms. W. may receive benefits for her current problems, she must first satisfy the more stringent prong of the *Allen* test for legal causation by showing that her activities at Home Depot were "unusual or extraordinary." *Allen v. Industrial Commission*, 729 P. 2d at 26.

Application of the *Allen* test to Ms. W.'s claim. To determine whether an employment activity involves an unusual or extraordinary exertion, the Labor Commission must apply an objective standard based on the nonemployment life of an average person. *Ibid.* In other words, the Commission must compare Ms. W.'S exertions at work to the typical nonemployment activities that are generally expected of people in today's society. By way of example, such activities include moving garbage cans, lifting and carrying baggage for travel, changing a flat tire, lifting a small child, or climbing stairs.

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2 The Commission rejects Home Depot's contention that the Court of Appeals' decision in *Acosta v. Labor Commission*, 44 P. 3d 819 (Utah App. 2002), discards *Nyhren's* requirement of proof that the preexisting condition **contributed** to the injury for which benefits are sought. To the contrary, *Acosta* reiterates that such a contribution is necessary before the more stringent prong of the *Allen* test can be applied. But *Acosta* itself dealt with a different issue—whether a preexisting condition that is **asymptomatic** can trigger the *Allen* test.

In her motion for review, Ms. W. argues that the exertions of her work at Home Depot on May 13, 2004, were unusual or extraordinary. These exertions involved lifting seven or eight boxes, one at a time, and carrying them a short distance. Most of the boxes weighed only 13 pounds; two were somewhat heavier, weighing 25 pounds. Such exertion is similar to moving boxes in a closet or garage, lifting and carrying items in the course of grocery shopping, or the lifting and carrying involved in ordinary lawn care.

In summary, the Commission concludes that Ms. W.'S exertion at Home Depot on May 13, 2006, were not unusual or extraordinary and do not satisfy the more stringent prong of the Allen test for legal causation. Consequently, the Commission concludes that Ms. W.'S current problems are not compensable under the Utah Workers' Compensation Act.

ORDER

The Commission affirms Judge Lima's decision and denies Ms. W.'S motion for review. It is so ordered.

Dated this 22nd day of February, 2006.

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R. Lee Ellertson
Utah Labor Commissioner